

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KIM A. COMPTON

Claimant

VS.

DILLON COMPANIES

Self-Insured Respondent

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Docket No. 1,005,161

ORDER

Claimant requested review of the May 25, 2005, Award by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on September 20, 2005.

APPEARANCES

Mitchell Rice, of Hutchinson, Kansas, appeared for the claimant. Scott J. Mann, of Hutchinson, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) found claimant had a 10 percent loss of use of his right shoulder but did not award claimant a whole body disability, finding claimant did not demonstrate that he had permanent disability to his neck. The ALJ also found that claimant's complaints of repetitive use trauma to his elbows and wrists were not timely reported to respondent. Since temporary total disability benefits and medical benefits were paid during claimant's treatment of his right elbow and wrist, the ALJ also found that there was an overpayment of these benefits, for which respondent was entitled to a credit. Therefore, the ALJ found that no additional compensation was due claimant.

The claimant requests review of the nature and extent of his functional rating and work disability benefits. He claims he has met his burden of proof that his neck was injured as a result of the work-related accident of February 19, 2001, and he was therefore entitled to a whole body impairment rating and work disability. He claims he is entitled to a permanent partial whole body disability based on a work disability of 55.4 percent.

Respondent argued to the ALJ that claimant should be limited to a 5 percent scheduled injury to his right upper extremity. Respondent also argued, in the alternative, that if claimant had sustained a general body disability, he failed to meet his burden of proof of entitlement to a work disability. On appeal, respondent requests the Board affirm the ALJ's Award, including the ALJ's finding of a 10 percent scheduled injury to the right shoulder and that there was an overpayment of temporary total disability benefits and medical benefits to claimant and, therefore, no additional compensation is due claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds that the Award entered by the ALJ should be affirmed. The Board agrees with the ALJ that claimant's work-related cervical injury was temporary and did not result in any permanent impairment or disability. Accordingly, claimant's permanency is limited to his right shoulder. As such, claimant's entitlement to permanent partial disability compensation is limited to the scheduled injury statute, K.S.A. 44-510d.

The ALJ's Award contains findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Board adopts the ALJ's findings and conclusions as its own.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated May 25, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mitchell Rice, Attorney for Claimant
Scott J. Mann, Attorney for Self-Insured Respondent
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director